No. 10-829

In The

Supreme Court of the United States

STEVEN I.; MARK I.; and JILL I.,

Petitioners,

v.

CENTRAL BUCKS SCHOOL DISTRICT,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

SCOTT H. WOLPERT
Counsel of Record
TIMONEY KNOX, LLP
400 Maryland Drive
P.O. Box 7544
Fort Washington, PA 19034
swolpert@timoneyknox.com
(215) 540-2656

Attorney for Respondent, Central Bucks School District

COCKLE LAW BRIEF PRINTING CO (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Whether the two-year statute of limitations under Section 1415(f)(3)(C) of the Individuals With Disabilities Education Act, which was enacted into law on December 3, 2004 and became effective seven months later on July 1, 2005, was applicable to Petitioners' due process complaint filed on May 1, 2007, so as to bar a portion of Petitioners' claims against the School District.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iii
RELEVANT PROVISIONS INVOLVED	1
STATEMENT	3
REASONS FOR DENYING THE PETITION	4
CONCLUSION	13

TABLE OF AUTHORITIES

Page

CASES

B.T. v. Hawaii Dept. of Educ., 2009 WL 4906344 (D. Hawaii 2009) 8

Baker v. Southern York Area Sch. Dist., 2009 WL 4793954 (M.D. Pa. 2009) 8

Breanne C. v. Southern York Cty. Sch. Dist., 665 F.Supp. 2d 504 (M.D. Pa. 2009) 8

Daniel S. ex rel. Michael S. v. Council Rock Sch. Dist., 2007 WL 3120014 (E.D. Pa. 2007) 8

Evan H. v. Unionville-Chadds Ford School District, 2008 WL 4791634 (E.D. Pa. 2008) 8

Fern v. Rockwood R-VI Sch. Dist., 2007 WL 1655673 (E.D. Mo. 2007) 9

Forest v. United States Postal Serv., 97 F.3d 137 (6th Cir. 1996) 5

J.P. v. Enid Public Sch., 2009 WL 3104014 (W.D. Okla. 2009) 8

Kelly v. Burlington N.R.R. Co., 896 F.2d 1194 (9th Cir. 1990) 7

Landgraf v. USI Film Prod., 511 U.S. 244 (1994) 4, 5, 11

Lawrence Township Bd. of Educ. v. New Jersey, 417 F.3d 368 (3d Cir. 2005) 9

Marple Newtown Sch. Dist. v. Rafael N., 2007 WL 2458076 (E.D. Pa. 2007) 8

Ochoa v. Hernandez y Morales, 230 U.S. 139, 33 S.Ct. 1033, 57 L.Ed. 1427 (1913) 7

TABLE OF AUTHORITIES – Continued

Page

Sch. Dist. of Philadelphia v. Deborah A., 2009 WL 778321 (E.D. Pa. 2009) 7

Smith v. Zeneca, Inc., 820 F.Supp. 831 (D. Del. 1993) 5

United States v. Simmonds, 111 F.3d 737 (10th Cir. 1997), *overruled on other grounds by United States v. Hurst*, 322 F.3d 1256 (10th Cir. 2003) 5, 7

Vernon v. Cassadaga Valley Cent. Sch. Dist., 49 F.3d 886 (2nd Cir. 1995) 5

Wilson v. Iseminger, 185 U.S. 55, 22 S.Ct. 573, 46 L.Ed. 804 (1902) 6, 12

STATUTES

20 U.S.C. § 1400 et seq. 1

20 U.S.C. § 1415(b)(6) 1

20 U.S.C. § 1415(f)(3)(C) 2, 7, 11

20 U.S.C. § 1415(f)(3)(D) 1, 11

28 U.S.C. § 1292(b) 4

RULE

F.R.A.P. 5 4

RELEVANT PROVISIONS INVOLVED

On December 3, 2004, the Individuals With Disabilities Education Act, 20 U.S.C. § 1400 et seq., was amended ("IDEA 2004") and this statute, as amended, included a two-year statute of limitations. The effective date of IDEA 2004 was July 1, 2005, which was seven months after the enactment date. 20 U.S.C. § 1415(b)(6) of IDEA 2004 provides as follows:

> (b) Types of procedures
>
> The procedures required by this section shall include the following:
>
> * * *
>
> (6) An opportunity for any party to present a complaint –
>
> * * *
>
> (B) which sets forth an alleged violation that occurred not more than 2 years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for presenting such a complaint under this subchapter, in such time as the State law allows, except that the exceptions to the timeline described in subsection (f)(3)(D) shall apply to the timeline described in this subparagraph.

20 U.S.C. § 1415(f)(3)(C) provides as follows:

> (C) Timeline for requesting hearing
>
> A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the Complaint, or, if the State has an explicit time limitation for requesting such a hearing under this subchapter, in such time as the State law allows.

IDEA 2004 contains the following express exceptions to the two-year limitations period:

> (D) Exceptions to the timeline
>
> The timeline described in subparagraph (C) shall not apply to a parent if the parent was prevented from requesting the hearing due to –
>
> (i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the Complaint; or
>
> (ii) the local educational agency's withholding of information from the parent that was required under this subchapter to be provided to the parent.

20 U.S.C. § 1415(f)(3)(C).

STATEMENT

Student was born in 1987 and is now 24 years old. Student was educated in the School District's schools between 1992 and June, 2005. Student was determined eligible for special education programming and services from 1993 onward. Student received special education programming and services from the School District throughout the time period in which he was eligible. Student graduated from high school in the School District in June, 2005 following his twelfth grade school year. Petitioners filed a due process complaint on May 1, 2007 in which they sought to pursue claims related to events dating back to 1997, at which time Student was in elementary school. Throughout the time period for which Petitioners sought to pursue claims in this litigation, specifically between 1997 and Student's graduation from high school in June, 2005, Student was at all times eligible for special education programming and services and such programming and services were provided to Student by the School District. In this due process litigation, Petitioners also pursued the claim that Student was not validly graduated from high school in 2005 and thus, compensatory education must accrue for any periods after Student's graduation from high school in June, 2005. This claim was rejected by the Due Process Hearing Officer, the Special Education Appeals Panel and the District Court.

The Due Process Hearing Officer and the Special Education Appeals Panel entered decisions in favor of the District in holding, *inter alia*, that Petitioners'

claims which pre-dated May 1, 2005 were barred by the two-year statute of limitations under IDEA 2004.

The District Court subsequently entered a decision in favor of Petitioners on the statute of limitations issue. On December 10, 2009, the School District filed a Petition for Permission to Appeal the District Court's Order dated February 18, 2009 pursuant to 28 U.S.C. § 1292(b) and F.R.A.P. 5. The Circuit Court entered an Order dated January 6, 2010 in which it granted the District's Petition for Permission to Appeal. The Circuit Court unanimously reversed the decision of the District Court on the statute of limitations issue.

REASONS FOR DENYING THE PETITION

THE COURT SHOULD DENY CERTIORARI ON THE BASIS THAT NO CONFLICT EXISTS WITH ANY PRIOR DECISION OF THIS COURT OR WITH THE DECISION OF ANY CIRCUIT COURT.

Petitioners incorrectly contend that the Circuit Court "ignored controlling precedent of this Court by permitting retroactive application of a newly enacted statute of limitations to a statute which had no statute of limitation" and that the Circuit Court "refused to apply" the two-step inquiry mandated by this Court in *Landgraf v. USI Film Prod.*, 511 U.S. 244 (1994). (Pet. 4). To the contrary, the Circuit Court specifically addressed and discussed the District

Court's application of the two-part retroactivity analysis under *Landgraf* and noted that the *Landgraf* analysis is typically controlling on issues of retroactivity, in particular to the application of new substantive requirements to conduct that occurred in the past. However, the Circuit Court correctly determined that the retroactivity analysis in *Landgraf* was not applicable because the statute of limitations under IDEA 2004 governed Petitioners' conduct in filing the claim, not the Respondent's conduct giving rise to the claim. The Circuit Court relied on well-settled legal principles in supporting this distinction, including the principle that retroactivity concerns do not bar the application of a changed limitations period to a suit filed after the effective date of the amended limitations period. *United States v. Simmonds,* 111 F.3d 737, 745 (10th Cir. 1997), *overruled on other grounds by United States v. Hurst,* 322 F.3d 1256 (10th Cir. 2003); see also *Vernon v. Cassadaga Valley Cent. Sch. Dist.,* 49 F.3d 886, 890 (2nd Cir. 1995). The Circuit Court also discussed and relied upon federal precedent which established that the conduct to which the statute of limitations applies is not the primary conduct of the Defendants, but is instead the secondary conduct of the Plaintiffs related to the filing of suit and as such, retroactivity is not an issue in such circumstances. *Forest v. United States Postal Serv.,* 97 F.3d 137, 140 (6th Cir. 1996); *Smith v. Zeneca, Inc.,* 820 F.Supp. 831, 833 (D. Del. 1993). As the secondary conduct, which was the filing of the due process claim by Petitioners, occurred after the effective date of the statute, the retroactivity analysis requested by

Petitioners was not applicable. In this case, the due process complaint was filed two and a half years after the IDEA 2004 was enacted and one year, eleven months after the effective date of IDEA 2004. Moreover, the IDEA 2004 statute of limitations provision was not applied retroactively herein, since this statute of limitations was already in effect on May 1, 2007, the date of the filing of the Petitioners' due process complaint.

The Circuit Court relied upon longstanding principles governing the application of amended statutes of limitations which were first stated by this Court over one hundred years ago in *Wilson v. Iseminger*, 185 U.S. 55, 62-63, 22 S.Ct. 573, 46 L.Ed. 804 (1902) in which this Court held that the statute of limitations contained in an 1855 statute could be applied to the obligation for ground rent which arose prior to the passage of that statute. This Court recognized that all statutes of limitations must proceed on the concept that the party has a full opportunity to try his/her rights in court based on the allowance of a reasonable time for commencement of suit. *Id.* at 62. The consideration of a reasonable time must be determined by legislative judgment. *Id.* at 62-63. This Court emphasized that statutes of limitations affecting existing rights are not unconstitutional if a reasonable period of time is provided for the commencement of an action before the statutory limitation period takes effect. *Id.* at 63 (citations omitted). Federal appellate decisions since *Wilson v. Iseminger*

have further defined that amended statutes of limitations cannot be unfairly applied so as to bar an action unless fair notice and a reasonable time for plaintiffs to bring their claims exist before the bar takes effect. See *Simmonds,* 111 F.3d at 745; *Ochoa v. Hernandez y Morales,* 230 U.S. 139, 161-62, 33 S.Ct. 1033, 57 L.Ed. 1427 (1913); *Kelly v. Burlington N.R.R. Co.,* 896 F.2d 1194, 1198-99 (9th Cir. 1990).

IDEA 2004 was enacted into law on December 3, 2004 and the effective date for the statute of limitations under 20 U.S.C. § 1415(f)(3)(C) was July 1, 2005, which provided a seven-month period between enactment and the effective date. The seven-month period constituted a reasonable notice period and an opportunity for Petitioners to file a due process complaint without being subject to the two-year statute of limitations in regard to events occurring prior to July 1, 2005. Petitioners did not file a complaint during this seven-month period. Instead, Petitioners waited approximately two and a half years after IDEA 2004 was enacted, and one year, eleven months after the amended statute's effective date, in which to file the due process complaint.

The IDEA provisions in effect on the date of the filing of Petitioners' due process complaint are controlling in regard to the applicability of the statute of limitations. Substantial District Court case law exists in which the date of the filing of the due process complaint after July 1, 2005 is determinative. See *Sch. Dist. of Philadelphia v. Deborah A.,* 2009 WL 778321 (E.D. Pa. 2009) (where due process complaint

filed on July 27, 2007 seeking compensatory education through 1999, District Court applied IDEA 2004's two-year statute of limitations to bar claims preceding July 27, 2005); *Breanne C. v. Southern York Cty. Sch. Dist.*, 665 F.Supp. 2d 504 (M.D. Pa. 2009) (where due process complaint filed on October 12, 2007 seeking compensatory education through 2000, District Court applied IDEA 2004's two-year statute of limitations to bar claims preceding October 12, 2005); *Baker v. Southern York Area Sch. Dist.*, 2009 WL 4793954 (M.D. Pa. 2009) (where plaintiffs commenced action on September 18, 2008 seeking compensatory education through 1995, District Court applied IDEA 2004's two-year limitations period to bar claims preceding September 18, 2006); *B.T. v. Hawaii Dept. of Educ.*, 2009 WL 4906344 (D. Hawaii 2009) (events occurring more than two years prior to July, 2008 due process complaint filing were time-barred under IDEA 2004); *J.P. v. Enid Public Sch.*, 2009 WL 3104014 (W.D. Okla. 2009) (claims related to events occurring more than two years before due process hearing request were time-barred under IDEA); *Evan H. v. Unionville-Chadds Ford School District*, 2008 WL 4791634 (E.D. Pa. 2008) (where due process complaint was filed on February 21, 2007 seeking compensatory education through 2001, District Court applied limitations period to bar claims preceding February 21, 2005); *Daniel S. ex rel. Michael S. v. Council Rock Sch. Dist.*, 2007 WL 3120014 (E.D. Pa. 2007) (District Court applied IDEA 2004's two-year statute of limitations to due process complaint filed after July 1, 2005); *Marple Newtown Sch. Dist. v.*

Rafael N., 2007 WL 2458076 (E.D. Pa. 2007) (District Court applied IDEA 2004's two-year statute of limitations where due process complaint filed after July 1, 2005); *Fern v. Rockwood R-VI Sch. Dist.*, 2007 WL 1655673 (E.D. Mo. 2007) (two-year limitations period applied to due process complaint filed in March, 2006). This case law is consistent with the determination by the Circuit Court in *Lawrence Township Bd. of Educ. v. New Jersey*, 417 F.3d 368, 370 (3d Cir. 2005) that those IDEA provisions in effect at the time of the filing of a due process complaint were controlling.

No conflict exists among the Circuit Courts in regard to the application of the IDEA 2004's two-year statute of limitations as ordered by the Circuit Court in this case. None of the cases relied upon by the Petitioners demonstrate the existence of a conflict among the Circuits and in fact, Petitioners specifically acknowledge that lack of conflict at the federal appellate level. Petitioners cite various District Court decisions in Pennsylvania that predated the Circuit Court's decision in this case; of course, no dispute on this issue currently exists in the Third Circuit in light of the Circuit Court's holding herein. Additionally, substantial decisional authority at the District Court level exists, as previously cited herein, which is consistent with the Circuit Court's holding in this case.

THE CIRCUIT COURT PROPERLY DETERMINED THAT THE SEVEN-MONTH PERIOD BETWEEN THE ENACTMENT DATE AND THE EFFECTIVE DATE OF IDEA 2004 PROVIDED REASONABLE NOTICE AND OPPORTUNITY FOR POTENTIAL LITIGANTS TO BRING CLAIMS

The Circuit Court's decision properly analyzed whether the seven-month period provided by Congress to potential litigants which existed between the enactment date and the effective date of the statute of limitations constituted reasonable notice that such persons had an opportunity to bring claims. The Circuit Court concluded that the seven months preceding the IDEA 2004 statute of limitations' effective date provided a reasonable opportunity for litigants to bring any claims that had already accrued. The Circuit Court was properly unwilling to "second-guess Congress's determination that seven months provides a reasonable opportunity for litigants to bring claims." (Pet. App. 9a) (footnote omitted).

Petitioners incorrectly assert that the seven-month time period between the IDEA 2004's enactment and the effective date did not put potential plaintiffs on notice that the new limitations period would apply to claims existing prior to July 1, 2005. The language of the amended statute is clear and specifically states that a parent **shall** request an impartial due process hearing within two years of the date the parent or agency knew or should have

known about the alleged action that forms the basis of the complaint. 20 U.S.C. § 1415(f)(3)(C) (emphasis added). The amended statute then provides specific exceptions to the two-year statute of limitations, such that a claimant can avoid the two-year statute of limitations if the parent was prevented from requesting a due process hearing due to specific misrepresentations by the local education agency or if the local education agency withheld information that was otherwise required to be provided to the parent. 20 U.S.C. § 1415(f)(3)(D). Petitioners' argument that the seven-month period between enactment and effective date did not provide reasonable notice to potential litigants is without merit in light of this mandatory language of 20 U.S.C. § 1415(f)(3)(C) ("shall request an impartial due process hearing within two years . . . ") and the demonstrated Congressional intent to permit claims beyond the two-year limitations period only if at least one of the exceptions is satisfied. Petitioners cite no authority in support of that position, apart from a reference that the *Landgraf* decision requires a statement of clear, unequivocal expression of congressional intent. Petitioners ignore the inapplicability of the *Landgraf* retroactivity analysis to the present case. Petitioners also incorrectly assert that the IDEA 2004 language does not create a simple "two-year statute of limitations", but instead establishes two distinct two-year time periods with exceptions. Petitioners cite no federal or state

case law in support of their interpretation of the statute and their claim that the IDEA 2004 statute of limitations is actually not a two-year statute of limitations.

Moreover, Petitioners assert that because one of the Petitioners herein was at one point a minor and an individual with a disability, that fact distinguishes IDEA cases from the holding of this Court in *Wilson v. Iseminger*. Petitioners' argument overlooks two key points. First, Petitioners in this case included and still include the student's parents, who are adults, and the record contains no evidence that they suffer from a disability. Second, the student herein was born in 1987 and is now 24 years old. While he was determined eligible for special education programming and services from 1993 onward due to a learning disability, the student lawfully graduated from high school in June, 2005, which was one year, eleven months before the due process complaint was even filed. Accordingly, the suggestion that Petitioners were somehow incapable of bringing a more timely claim is incorrect.

CONCLUSION

WHEREFORE, Respondent, the Central Bucks School District, respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

SCOTT H. WOLPERT
Counsel of Record
TIMONEY KNOX, LLP
400 Maryland Drive
P.O. Box 7544
Fort Washington, PA 19034
swolpert@timoneyknox.com
(215) 540-2656

Attorney for Respondent,
Central Bucks School District